

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS**

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE; and
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Plaintiffs,

v.

Civil Action No. 1:20-cv-11283

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; CHAD F. WOLF, in his
official capacity as Acting Secretary of the
United States Department of Homeland
Security; and MATTHEW ALBENCE, in his
official capacity as Acting Director of U.S.
Immigration and Customs Enforcement,

Defendants.

DECLARATION OF CYNTHIA BARNHART

I, Cynthia Barnhart, hereby state under the penalty of perjury that the following statements are true and accurate to the best of my knowledge, based on my personal knowledge as well as information compiled and verified by other MIT employees, and that I could testify to these matters if called to do so:

1. I am the Chancellor of the Massachusetts Institute of Technology (“MIT” or the “Institute”), a position I have held since 2014. I have been a member of MIT’s faculty since 1992. In addition to serving as Chancellor, I am currently a Ford Foundation Professor of Engineering and a Professor in the Department of Civil and Environmental Engineering. I

previously served as Associate and Acting Dean of the School of Engineering and co-directed both the Operations Research Center and the Center for Transportation and Logistics.

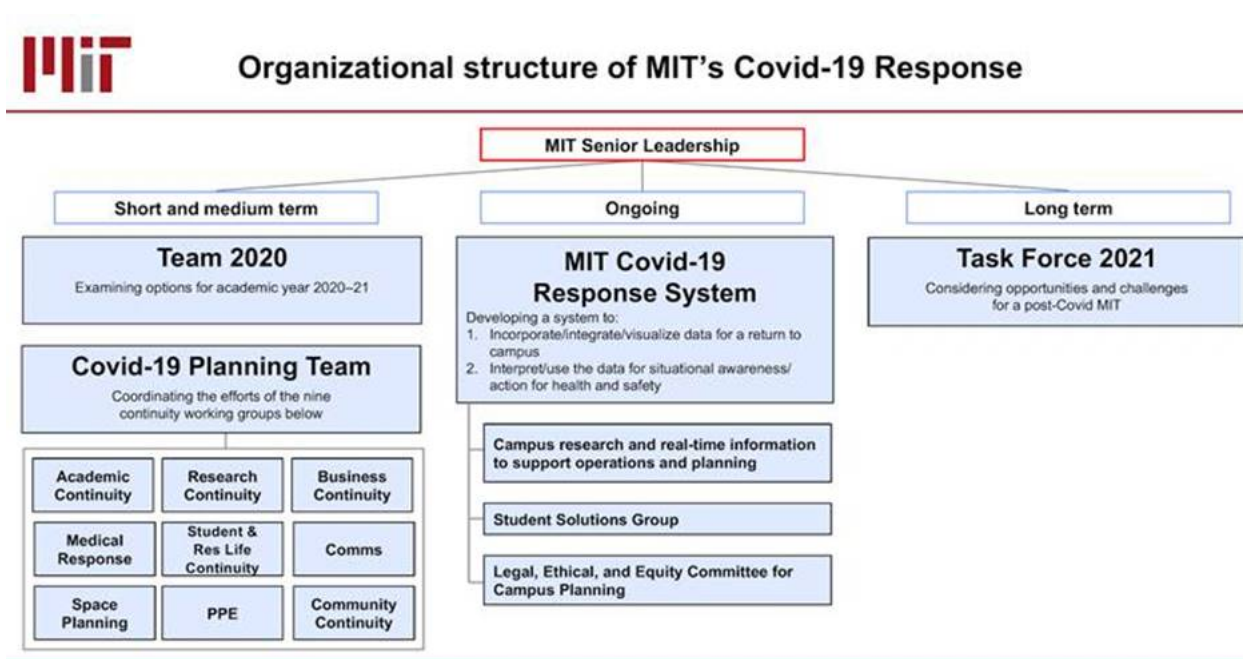
2. In my role as Chancellor, I am a member of MIT President L. Rafael Reif's senior leadership team and am responsible for all aspects of undergraduate and graduate education and residential life. I also have oversight over MIT's international students, including oversight over MIT's International Students Office ("ISO"), which provides support for MIT's thousands of international students.

3. MIT currently has 3,873 active students holding F-1 visas, including students on Optional Practical Training ("OPT"), which allows eligible students to receive up to 12 months of employment authorization before completing their academic studies and/or after completing their academic studies, and students on STEM OPT, which allows students who have earned a degree in certain science, technology, engineering, and math fields to apply for a 24-month extension of their post-completion OPT employment authorization if certain other criteria are met. In addition, MIT has 459 newly admitted students who have not started their programs or F-1 visa status.

4. In my role as Chancellor, I have worked collaboratively for the last several months with President Reif, MIT's leadership, faculty, staff, scholars, alumni, students, parents, and outside advisors in the development and implementation of MIT's plans and operations during the COVID-19 pandemic, including our plans for undergraduate and graduate education this fall.

5. On March 10, 2020, MIT announced that the Institute would suspend in-person classes and transition to virtual instruction for the remainder of the semester, and asked that students not return to campus after spring break. That decision, in which I was directly involved, was made with the goals of helping protect the MIT and broader community against the spread of COVID-19 while delivering excellent education to our students. In a matter of days, the vast majority of MIT's students left campus and the Institute transitioned to online learning for our students.

6. Recognizing that the uncertainty and public health risks posed by COVID-19 for the summer and the future academic year, the Institute quickly shifted to planning for the future. We deployed working groups to analyze and advise on all aspects of the Institute's COVID-19 planning. The following chart lays out some of the different working groups that have been working actively since March on these efforts:



7. One of the working groups established by the Institute was a team of senior faculty and administrators charged in late March 2020 by MIT's senior leadership with examining options and making recommendations for the 2020-2021 academic year. This team—known as Team 2020—worked extensively throughout April, May, and June 2020 to formulate these recommendations and guidance.

8. Team 2020 drew heavily on the expertise and opinions of MIT community members and other local, national, and global leaders in public health. The efforts to employ the expertise and input of the community were significant and included, among other things, numerous community-wide and subgroup-specific surveys, community events such as town halls and small group

discussions, daily morning meetings to discuss issues and solicit input, and senior team meetings with individual academic schools. Team 2020 and MIT's senior leadership received regular input from public health experts on their projections for the course of the pandemic and mitigating efforts.

9. The efforts to prepare for the fall semester have also involved significant and time-intensive participation by many segments of the MIT community. For example, in response to Team 2020's request to the MIT community for input on the options for the fall, we had wide-ranging participation, including:

- a. 425 participants in brainstorming "charettes," a type of intense, collaborative, design process, conducted over the course of multiple days in 69 different breakout sessions, led by another 90 volunteers serving as facilitators and notetakers;
- b. 900 completed and 900 partial responses to an online form, comprising 27,000 text comments; and
- c. 17 self-organized group discussion sessions among students, parents, faculty, staff, and other MIT community members.

10. In addition, President Reif, Provost Martin Schmidt, Vice President for Research Maria Zuber, and I attended town halls with the faculty of each of our five Schools and our College of Computing to present options for the fall and solicit input.

11. These efforts all happened simultaneously with significant additional planning in each of our academic departments, laboratories, centers, and among our students and scholars. Our undergraduate and graduate student leaders provided thoughtful input on the planning for the fall—all while maintaining their education remotely.

12. As part of my work evaluating the options and making recommendations for the fall semester, members of Team 2020 and I reviewed and/or were briefed on the COVID-19 Guidance

for Student and Exchange Visitor Program (“SEVP”) that the United States Immigration and Customs Enforcement (“ICE”) issued in response to the COVID-19 pandemic. On March 13, 2020, ICE issued COVID-19 Guidance for Student and Exchange Visitor Program Stakeholders (“March 13 Guidance”). Pursuant to the March 13 Guidance, students in the United States holding F-1 visas are allowed to “count online classes towards a full course of study” in the event their school temporarily stopped in-person classes, regardless of whether the visa holders remained in the United States or departed the United States. The March 13 Guidance stated that it would remain “in effect for the duration of the emergency.”

13. After months of analysis and deliberation, MIT announced on July 7, 2020 that it would allow only a very limited number of undergraduates to be on campus during the Fall 2020 semester in order to help protect the community against COVID-19. In his letter to the community, attached hereto as Exhibit 1, President Reif described the difficult and complicated decision and MIT’s reliance on the bedrock principles of “protecting the health of our entire community, preserving our ability to deliver on MIT’s mission of teaching and research, enabling students to stay on track to their degrees—and doing all this with equity, fairness and caring.” The decision was informed by the current public health situation and “reflects our awareness of how much we do not know about the future of the virus or the efforts to fight it. As the pandemic continues to rage across the US, we believe our approach represents the best, most responsible way for our community to begin to resume residential education. Crucially, it preserves our capacity to make it possible for any student on campus who may develop Covid-19 to isolate in place.”

14. In an effort to balance community safety and student experience and success, MIT announced the following decisions for coursework for the upcoming academic year:

- a. Of the undergraduates, only rising seniors will be invited back to campus for the fall; other undergraduates may be invited back to campus in the spring (subject to re-evaluation before the start of the spring semester);
- b. In addition, a small number of other students whose circumstances require special consideration (for example, because of safety or hardship reasons) will be allowed to request access to campus housing; and
- c. For undergraduate students not living on campus, subjects will be taught online; for undergraduate and graduate students on campus, there will be a combination of online and in-person instruction.

15. On July 6, 2020, ICE issued Fall 2020 COVID-19 Guidance (“July 6 Directive”).

The July 6 Directive largely withdraws the exception that SEVP announced in March. The July 6 Directive states that if a school provides only online course instruction in the fall, students holding F-1 visas may not remain in the United States to pursue their studies. It provides that students holding F-1 visas “must depart the country or take other measures, such as transferring to a school with in-person instruction to remain in lawful status[,] or potentially face immigration consequences including, but not limited to, the initiation of removal proceedings.” It is our current understanding that if the July 6 Directive takes effect, MIT students with F-1 student visas who are enrolled in remote programs will face immigration consequences if they do not leave the country within 15 days of the start of the Fall 2020 term. Further, it is our understanding that MIT students with F-1 student visas who are enrolled in programs that are a hybrid of remote and in-person learning but remain outside the United States will not be permitted to participate in their coursework remotely and also maintain their F-1 visa status.

16. The July 6 Directive, if it takes effect, will have significant negative impacts on MIT students and MIT as an institution. First, as detailed above, MIT has expended tremendous energy

over the preceding four months to develop guidance for the Institute's operations to take reasonable measures to prioritize the health and safety of its students, faculty, staff, and the surrounding community while maintaining the vibrant and rigorous educational community at the Institute. Because of the timing of the July 6 Directive, MIT will not be able to significantly change its plans and procedures or to alter the structure of its remote learning programs at this stage.

17. International students at MIT bring enormous value to the intellectual community in the form of diverse perspectives and varied research interests. Those students are involved in cutting-edge research and contribute through their participation in the collaborative learning environment as well as by acting as teaching assistants for undergraduate students. Given the timing and implications of the July 6 Directive, MIT is faced with an impossible choice of either losing students who bring immense benefits to the school in order to follow its current, well-considered plan, or taking steps to retain international students that contradict its reasoned public health judgments in response to the pandemic.

18. The July 6 Directive also creates an enormous administrative hurdle for MIT during a time when administrators are devoting the majority of their time and effort to respond to the pandemic. Under the Directive, schools must update all F-1 records and issue a new Form I-20 to all F-1 visa students no later than August 4, 2020. MIT will be required to generate thousands of forms in under a month to verify eligibility to pursue studies in the U.S.

19. The short timeframe of the July 6 Directive before the start of the fall semester not only makes it difficult for the Institute to change course; it makes it even more difficult for international students to make alternative arrangements. International flights are expensive and in the case of many countries, direct flights are unavailable, necessitating multiple transfers, which increases the risk of COVID-19 with each leg of the journey. International students will need to make arrangements for housing in their home countries and will likely face financial hardship in

breaking leases or finding subletters for their housing, if permitted, in the United States. Some of our F-1 visa students are living in emergency on-campus housing that has been provided by MIT. In many cases, providing this emergency on-campus housing was essential to ensuring that students, including F-1 students, could continue their academic progress during the pandemic. Requiring these students to leave the United States will mean they must leave the emergency housing that was set up specifically to ensure their ability to continue their studies.

20. For students with families and children, these challenges are exacerbated. Significant others of our F-1 students will need to make alternative arrangements and many of our students with young children will face difficulties in enrolling students in daycares and schools outside of the country. Some families will be forced to split apart in order to comply with the July 6 Directive.

21. Leaving the United States will also result in unique hardships for some of our students. For example, some of our students with disabilities have housing accommodations that would not be available to them in their home countries. Other students could face risk of arrest or other persecution in their home countries based on their sexual orientation or gender identity.

22. F-1 students are heavily involved in research at MIT. It will be very difficult for some students to continue their research remotely—even where direct lab work is not a principal component of a student's work—because coordinating research collaboration and accessing necessary resources will not be possible in their home countries.

23. Many F-1 students also planned to pursue employment through OPT or OPT with the STEM extension. If they are forced to leave the United States under the July 6 Directive, they will be unable to pursue their OPT plans. We have heard from many of our students who planned to use OPT to launch their careers, and the pause in their F-1 status will prevent them from doing so.

24. In addition to the concerns with post-completion OPT status, students holding F-1 visas typically have the opportunity to pursue pre-completion practical training, internship, and

experiential learning opportunities within the United States, which complement the in-classroom instruction provided by MIT. In many cases, these opportunities are with preeminent U.S.-based labs, centers, and companies. In other cases, students have research assistantships or other experiential opportunities with MIT labs or faculty. Some of these opportunities are simply not available to students residing outside the United States. And those that are permitted may be extremely difficult to pursue from abroad, as students would need to coordinate meetings and other efforts with team members and supervisors in the United States.

25. The Institute also relies on international graduate students to help teach some of the courses at the Institute. If F-1 students are prevented from returning to or remaining in the United States under the July 6 Directive, they will be forced to attempt teaching in the face of time zone difficulties and internet connectivity issues. Some F-1 students will be returning to home countries where the internet has been made unavailable by the governments in those countries. Other countries have put in place severe internet restrictions that make websites and platforms essential to academic progress unavailable.

26. This week, we have also heard from students who will face dangers if forced to return to their home countries. Civil unrest and violence are ongoing in many of the countries where our international students will return and those conditions will not only make remote learning and teaching difficult, but they will pose potential harms to our students. In addition, many F-1 students are from countries or communities that are experiencing greater numbers of daily COVID-19 cases than Massachusetts or Cambridge. The health risks associated with COVID-19 are particularly acute for our F-1 students who have underlying conditions that place them at high risk of severe illness related to COVID-19.

27. If forced to leave the United States, many students will face a difficult and uncertain path to returning to the United States to continue their educations. At this stage, U.S. consular

offices are closed for routine visa appointments. Even when the consular services reopen in the students' home countries, many students live great distances from the consular offices and will be required to pay large sums to reinstate their visas. Many countries have long waits for future visa appointments and will be delayed in returning to complete their degrees if they are forced to return home at this stage.

28. Moreover, the July 6 Directive directed that schools offering a hybrid model “must certify to SEVP, through the Form I-20, ‘Certificate of Eligibility for Nonimmigrant Student Status,’ that the program is not entirely online, that the student is not taking an entirely online course load for the fall 2020 semester, and that the student is taking the minimum number of online classes required to make normal progress in their degree program.” To comply with this requirement, MIT would need to issue a new Form I-20 for each of its potentially thousands of students on F-1 status and to do so within 21 business days of the July 6 Directive. Doing so is not only unduly burdensome, but, in many cases, impossible because students are generally not required to even register for particular classes until closer to the start of the semester.

29. In addition to harms described above affecting large numbers of MIT students, the Institute has also heard from individual students from all parts of the world who will face challenges by remaining in or being forced to return to their home countries:

- a. Not being safe or welcome in their home country because of their sexual orientation;
- b. Restricted Internet access, limitations on electricity, and internet firewalls that make certain communication tools unavailable, making remote learning difficult, if not impossible;
- c. Social unrest; and
- d. Flight restrictions that make airline tickets prohibitively expensive.

30. MIT's goal is to welcome all students back to campus for in-person learning as soon as it can responsibly do so. At this point, however, it would not be feasible for MIT to safely implement Institute-wide in-person learning for the Fall 2020 semester. MIT invested significant time devising, planning, and implementing the 2020-2021 curriculum in a manner that did not anticipate widespread in-person learning, and it would not be possible for MIT to implement the necessary safety measures required for Institute-wide in-person learning for the Fall semester, particularly in light of the uncertainty surrounding COVID-19.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this day, July 8, 2020

/s/ Cynthia Barnhart
Cynthia Barnhart